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Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

ARTHUR O. ARMSTRONG,

Petitioner,

v.

PHILADELPHIA BOARD OF EDUCATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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28 pp

QUESTION PRESENTED

Did the United States Court of Appeals deny a civil litigant's rights when litigant was denied to file notice of appeal from the district court of the Court of Appeals for a recovery of damages resulting from the deprivation of right, privileges and amenities secured by the Federal Constitution and the Laws of the United States perpetrated by the adversary parties?

PARTIES TO THE PROCEEDING

In addition to the party named in the caption, Willig, Williams & Davidson, Harold Diamond Law Offices, Philadelphia Federation of Teachers, Ann G. Waiter, Constance E. Clayton, Ruth W. Hayre, Arlene B. Holtz, Armita B. Sims, Arlene Robin, Albert M. Gentil, Arnold S. Oblon, Edward Williams, Noris Eldridge before the Court of Appeals.

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OPINIONS BELOW

The order of the United States Court of Appeals for the Third Circuit ("Court of Appeals") was entered on March 8, 15, and April 23, 2001 denying right to file Notice of Appeal.

STATEMENT OF JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment declares:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 5 prohibits all conspiracies to interfere with the exercises of a "right" secured by the Constitution.

42 U.S.C. § 1981 — CIVIL RIGHT ACTS OF 1886, 1870 provides:

> All persons within the jurisdiction of the United States shall have the same right * * * to make and enforces contracts, to sue, be parties, give evidence, and to the full and equal protection of

> all laws and proceedings for the security of persons and property as is enjoyed by white citizen, and shall be subject to like punishments, pain, penalties, taxes. Licenses, and exaction of every kind, and to no other.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statue, ordinance, regulations, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1985 in brief prohibits conspiracies to interfere with civil rights.

42 U.S.C. § 1986 proscribes knowing neglect to prevent (or aid or abet after the fact) such a conspiracy.

42 U.S.C. § 1985(3) set forth five (5) elements: (1) a conspiracy; (2) motivated by racial or other class-based invidious discriminatory animus, (3) for the purpose of depriving, directly or indirectly, and person or class of persons of equal protection of the laws; (4) that the conspirators committed some act in furtherance of the conspiracy; and (5) that plaintiff was either injured in his person or property or was deprived of having and exercising any right or privilege of a citizen of the United States.

RACIAL HARASSMENT AND HOSTILE WORK ENVIRONMENT CASE

Article B-II — Grievance Procedure, Collective Bargaining Agreement between the School District of Philadelphia and the Philadelphia Federation of Teachers — AFL-CIO.

Federal Rules of Civil Procedure 56 provides for summary judgment relief in favor of plaintiff since plaintiff was entitled to judgment as matter of law.

Rule 4, Appeal as a right.

STATEMENT OF THE CASE

The fundamental question in this case is whether the litigant has a right to file notice of appeal in the Court of Appeals for the recovery of damages, for the deprivation of rights, privileges and amenities secured by the Constitution and the laws of the United States by such deprivation perpetrated by adverse parties. It arises in the context of the plaintiff's motion seeking permission to institute action in the United States District Court, for recovery, captioned: *Arthur O. Armstrong v. School District of Philadelphia, et al.*, C.A. Nos. 94-CV-3544 alleging constitutional violations and 99-CV-00825, alleging conspiracy under the 42 U.S.C. §§ 1985 and 1986 theories. District Court filed an injunctive order barring plaintiff from seeking recovery until such time he demonstrated that he can overcome objection by the adverse parties. Plaintiff's motion package demonstrated, with supporting affidavit and documentation, it was viable and could and did over come any obstacles presented, if any, by adverse parties. On or about January,

2000, plaintiff filed motion package in accordance to September 28, 1999 order and in accordance to Federal Rule 56 of Civil Procedure for recovery. Defendants failed to respond, in any way to plaintiff's action. Rule 56 provided: where summary judgment motion is supported by affidavit and documentation, adverse party may not rest on his pleading but must otherwise show that genuine issue remain for trial pursuant to Rule 56; moreover, where party responding to summary judgment motion fails to raise by affidavit or other materials genuine issue of material fact, facts presented in moving parties' materials are considered established. *United States v. President*, 591 F. Supp. 1313 (N.D. Ill. 1984). According to Rule 56, of the Federal Rules of Civil Procedure, plaintiff is entitled to judgment as a matter of law. On or about November 6, 2000, district court denied plaintiff's motion package and filed injunction against plaintiff, totally restricting plaintiff from federal court for recovery from such deprivation of rights, privileges and amenities secured by the Federal Constitution and the laws of the United States perpetrated by such defendants. No person "shall ever be denied his right to the processes of the court." *In re Green*, 598 F.2d 1126, 1127 (8th Cir. 1979). In the instant action the prefiling injunction totally restricts Armstrong's access to the federal courts with regard to any action against the adverse parties. Prefiling injunctions should be "tailored to the specific circumstances presented." *Cok v. Family Court of Rhode Island*, 985 F.2d 32, 34 (1st Cir. 1993). Plaintiff filed notice of appeal on December 18, 2000. U.S. Court of Appeals on December 21, 2000 said to ask for permission. Plaintiff responded accordingly. Permission was denied on March 15, 2001, and April 23, 2001. Mr. Armstrong filed Notice of Appeals, as a right, denied in a letter dated May 15, 2001.

To fully appreciate the significant of the case, it is essential to consider is procedural background.

BACKGROUND

On or about August 25, 1992 Arthur O. Armstrong, a tenured teacher, after more than twenty years of successful teaching, School District of Philadelphia arbitrarily and unlawfully discharged plaintiff from his teaching position in violation of the collective bargaining agreement, Article B-III, Grievance Procedure and in violation of the procedural due process of law and equal protection clause violation.

> Tenured and/or non-tenured employees shall not be subjected to discipline or discharge except for just cause and in such case the employee affected shall have the option of electing to proceed under the provisions of the Pennsylvania Public School Code or, in the alternative, under the grievance and arbitration provisions of this Agreement.

On or about February, 1993, Union's Lawyer, for Willig Williams & Davidson, asked plaintiff to waive his rights to a hearing, at which time the employer and already illegally discharged plaintiff without a hearing and in violation of the collective bargaining agreement. Plaintiff said he came to get his job back, not to relinquish it, and expressly denied his request!

PROCEEDING BELOW

On or about March 7, 1993 pro se plaintiff filed action in the Court of Common Pleas of Philadelphia County, Pennsylvania, captioned: *Arthur O. Armstrong v. School*

District of Philadelphia and Philadelphia Federation of Teachers, C.A. No. 2254, alleging civil rights violation, amid other things. Served defendant Philadelphia Federation of Teachers, only.

On or about June 12, 1994 the litigant instituted an action in the United States District Court For the Eastern District of Pennsylvania, captioned *Arthur O. Armstrong v. School District of Philadelphia and Philadelphia Federation of Teachers*, C.A. No. 94-CV-3544 alleging civil rights violations. On or about August 25, 1994, the litigant, the School District and Philadelphia Federation of Teachers Union entered into a contract stipulating that litigant be given due process of law hearings in accordance to the collective bargaining agreement lieu federal and state lawsuits. Mr. Armstrong withdrew his federal and state lawsuits as stipulated. On or about November 18, 1994 the employer school district and the employer Union, breached the situated contract and instead of having procedural due process hearings as stipulated, in accordance to the collective bargaining agreement, had a fraudulent arbitration hearing in violation of procedures and in violation of the collective bargaining agreement, Article B-VIII, GRIEVANCE PROCEDURE. That School District of Philadelphia, PFT, and school officials threat acted, with constitutional right violations when the defendants School District and Union acted with wanton negligence, duplicity, arbitrariness, capriciousness, fraud, falsity, trickery, malice, collective bargaining agreement violation, due process of law violation and conspiracy against Mr. Armstrong. On January 16, 1995 employer Union sent plaintiff a letter stating that reinstatement was denied. That plaintiff, on or about January 16, 1995 was arbitrarily denied reinstatement to his teaching position without due process of law and without equal

protection of the laws by conspiratorial action of the defendants. § 5 prohibits all conspiracies. And 42 U.S.C. §§ 1985 and 1985, in brief, prohibits conspiracy to interfere with civil rights and proscribes neglect (or aid or abet after the fact) such conspiracy. The Fifth Amendment to the Constitution provides in relevant part: "no person shall . . . be deprived or life, liberty or property without due process of law . . . nor to deny to any person within its jurisdiction equal protection of the laws."

Plaintiff instituted an action in the United States District Court, captioned; *Armstrong v. School District of Philadelphia, et al.*, C.A. No. 94-CV-3544 alleging civil rights violations. District Court Thomas O'Neill dismissed action on or about May 1, 1995 for insufficient alleges.

The Petition should be granted because the opinion below disregards the essential due process rights of a litigant secured by the Federal Constitution and the laws of the United States.

The Petition should be granted because the opinion below disregards the essential rights of a litigant under statutes 1985 and 1986 prohibiting conspiracy and statute 5 prohibiting all conspiracies.

The Petition should be granted because the opinion below disregards the essential equal protection rights of a litigant under the Equal Protection Clause.

That on or about February, 1995 the litigant reopened Civil Action 94-CV-3544 but district court dismissed case for insufficient alleges. On or about June, 1996 litigant instituted an action in the United States District Court for

the Eastern District of Pennsylvania, Captioned: *Armstrong v. School District of Philadelphia*, No. 96-CV-5740, alleging due process of law violation, and 96-CV-5925 asserting equal protection right violation, captioned: *Armstrong v. Constance E. Clayton, et al.* District Court dismissed action on statute of limitations grounds, stating that litigant was attacking his 1992 discharge action. On or about September 25, 1997, plaintiff instituted action in the U.S. District Court for the Eastern District of Pennsylvania, captioned: *Armstrong v. School District of Philadelphia*, No. 97-CV-6130, alleging due process of law violation and No. 97-CV-617__ alleging equal protection and racial conspiracy, under 42 U.S.C. § 1985(3) Civil Rights Act. Case was dismissed on statute of limitations grounds on or about January, 1998.

On or abut February 16, 1999, plaintiff instituted an action in the United States District Court of the Eastern District of Pennsylvania, C.A. No. 99-CV-00825, captioned: *Arthur O. Armstrong, et al.*, asserting conspiracy under 42 U.S.C. §§ 1985 and 1986. On or about September 28, 1999, district court dismissed the action an filed an injunction against plaintiff, stating in part that plaintiff was harassing the defendants, prohibiting plaintiff from filing action without permission from that court. On or about January 2000-November 3, 2000, in complying with the court's order, plaintiff sent motions to proceed with the action against the said defendants, but district court refused to file such motion. Plaintiff's motions were supported by affidavits and documentations and under Rule 56 of the Federal Rules of Civil Procedure, accordingly, plaintiff is entitled to judgment as a matter of law. On or about November 6, 2000, Judge Hutton denied plaintiff's motions on frivolous grounds — said did not comply with order, without procedural

due process of law and without merits. Plaintiff moved the court with motion for reconsideration. The Honorable Hutton denied such motion.

The Petition should be granted because the opinion below disregards the essential Rule 56 of the Federal Rules of Civil Procedure granting plaintiff a recovery for damages.

The Petition should be granted because the opinion below disregards the essential due process rights of a litigant, not to be denied property without procedural due process of law.

On or about December 12, 2000, plaintiff filed notice of appeal.

On or about December 21, 2000, U.S. Court of Appeals for the Third Circuit in an injunctive order mandated Armstrong to ask for permission. On or about December 27, 2000, plaintiff, in accordance to the 1994 injunctive order asked such court for permission. On March 8, 15, and April 23, 2001, U.S. Court of Appeals for the Third Circuit denied motion to docket notice of appeals in *Armstrong v. School District of Philadelphia, et al.*, 94-CV-3544 and 99-CV-00825.

The Petition should be granted because a United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the lower court, as to call for an exercise of the Court's supervisory power.

CONCLUSION

This case presents a question of exceptional importance — whether district court departed from the usual proceeding and by doing so, denied plaintiff of his rights to file complaint for relief — if so, the constitution would have no meaning of significant and a litigant would forever be deprived of rights secured by the Federal Constitution and the laws of the U.S. by granting Mr. Armstrong's petition for certiorari, however, this Court corrects the Third Circuit's departure, which defies the Constitution of the United States which states "No person shall be deprived of life, liberty of property without due process of law, nor deny to any citizen within its territory or jurisdiction equal protection of the laws."

Accordingly, Mr. Armstrong respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

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